



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200843042

AUG - 1 2008

UIL No. 401.06-01
UIL No. 401.06-02

SE: T: EP: RA: T4

LEGEND

Trust A =

IRA Z =

Trustee A =

Taxpayer A =

Individual B =

Individual C =

IRA X =

IRA Y =

Will A =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Date 10 =

Amount A =

Amount B =

State A =

Bank A =

Company A =

Company B =

Dear :

This is in response to a request for a private letter ruling dated * * *, submitted on behalf of Trust A by its authorized representative, as supplemented by letters dated * * * and * * *, concerning the application of sections 401(a)(9) and 408(d) of the Internal Revenue Code ("Code").

Under penalty of perjury, the following facts and representations have been submitted in support of the ruling request:

Taxpayer A, whose date of birth was Date 1, died testate on Date 2, a resident of State A, without having attained age 70 1/2. At his death, Taxpayer A owned IRA X (now IRA Y maintained with Company B) with Company A. It has been represented that IRA X (now IRA Y) either met or meets the requirements of Code section 408(a).

Taxpayer A was survived by a spouse, Individual B, whose date of birth is Date 3, and a son, Individual C, whose date of birth is Date 4. Individual C has no children. On Taxpayer A's date of death, and at all times continuing through the determination date, Date 5, Taxpayer A had no descendants other than Individual C.

Taxpayer A's beneficiary designation form dated Date 6, designated Individual C as the primary beneficiary of IRA X (now IRA Y), provided Individual C was then living, and if not then living, then the beneficiaries were Individual C's then living

lineal descendants per stirpes. If neither Individual C nor any of the lineal descendants were living on Taxpayer A's date of death, the contingent beneficiary was designated as Individual B.

The beneficiary designation form further provided that if a testamentary trust was to be established for the benefit of Individual C under the terms of Taxpayer A's last will and testament (Will A), then the balance of IRA X (now IRA Y) was to be payable as a separate share to such testamentary trust in a lump sum or in installments as the Trustees of such trust should determine in accordance with the requirements of applicable law. The IRA custodian was provided with a copy of the beneficiary designation form under a cover letter dated Date 7.

Accordingly, because Individual C was living on Taxpayer A's date of death, Trust A was established for the benefit of Individual C in accordance with Paragraph D of Article V of Will A. You represent that Trust A is valid under the laws of State A, and became irrevocable upon Taxpayer A's date of death. The IRA custodian was provided with a copy of Will A by letter dated Date 8, and advised that the beneficiary of IRA X (now IRA Y) was Trust A.

To avoid the imposition of Federal estate tax, pursuant to a timely disclaimer the amount of IRA X (now IRA Y) payable to Trust A was limited to Amount A, and the balance, Amount B, was paid to Individual B. You represent that the disclaimer satisfied the requirements of section 2518 and of applicable State A law. The IRA custodian was notified of the disclaimer, and amount B was paid to Individual B on Date 9.

Trust A requires the Trustees to pay to Individual C all of the Trust income and permits the Trustees to make discretionary distributions of principal to pay for Individual C's health, education, support and maintenance. Additionally, the principal of Trust A is required to be paid to Individual C in one-third (1/3) increments with full payment made upon Individual C's attaining age 40.

If Individual C fails to attain the age of 40, then the remaining Trust property will be paid to Individual C's then living lineal descendants, if any, and if none, then to Individual A's heirs at law. Each share established for a beneficiary, other than Individual C, would be distributed outright to each such beneficiary, provided such beneficiary was over age 21.

Because Individual C does not have any children and is Taxpayer A's only child, the contingent beneficiaries of Trust A are Taxpayer A's heirs at law. Under applicable State A law, if a decedent has no surviving descendant, then the decedent's spouse is the sole heir at law. Accordingly, Individual B would at all times through the determination date be Taxpayer A's sole heir at law for purposes of determining the remainder beneficiary of Trust A, and any Trust A property distributed to her would be distributed outright and free of trust.

On or about Date 10, for investment reasons, IRA X was transferred by the Trust A Trustees to IRA Y. As of Date 2, Taxpayer A had not yet begun taking distributions from IRA X (now IRA Y). As of Date 2, and after the disclaimer was made, annual distributions have been made from IRA X and IRA Y to Trust A in an amount at least equal to the required minimum distributions, within the meaning of section 401(a)(9) of the Code, calculated using Individual B's life expectancy.

Individual B was appointed as the sole personal representative of Taxpayer A's estate. All debts, taxes and expenses of the estate were paid from assets other than IRA X (now IRA Y). Section 222.21(2)(a) of State A law provides, in relevant part, that any money or other assets payable to a beneficiary from an account exempt from tax under Code section 408 is exempt from the claim's of creditors of the account owner and account beneficiary (ies).

Finally, it has been represented that Trustee A will cease to act as Trustee of Trust A, and be replaced by Bank A as successor Co-Trustee. Such change will be made in accordance with the procedures set forth in Will A. After such change in Trustee, it is intended that the Trust A Trustees will accomplish the transfer of IRA Y to an IRA account managed by Bank A as a direct trustee to trustee transfer. Such IRA will be maintained in the name of Individual A to benefit the Trust and will be titled as IRA Z.

Based on these facts and representations, the following rulings are requested:

1. That, Trust A qualifies as a "See-Through" trust under Code section 401(a)(9)-4, Q&A-5, permitting the beneficiaries of Trust A to be treated as having been designated as beneficiaries of IRA X (IRA Y) on Taxpayer A's date of death;
2. That, Individuals B and C are the only individuals who need to be considered for purposes of determining who is the designated beneficiary of IRA X (IRA Y) for purposes of calculating the minimum distributions under section 401(a)(9) of the Code;
3. That, the minimum distribution requirements under section 401(a)(9) of the Code may be met by distributing amounts annually from IRA Y computed using the remaining life expectancy of Individual B, utilizing the Single Life Expectancy Table provided in section 1.401(a)(9)-9, Q&A-1, commencing with the calendar year 2004, and reduced by one for each subsequent year in accordance with section 1.401(a)(9)-5, Q&A-5(c)(1); and
4. That the Trust A Trustees may transfer, by means of a direct trustee to trustee transfer, Trust A's interest in IRA Y to another IRA described in Code section 408(a) maintained by Bank A and established and maintained as IRA Z.

Furthermore, that such transfer will not constitute a payment or distribution out of IRA Y to Trust A as beneficiary, payee, or distribute as those terms are defined in Code section 408(d), and will otherwise be a non-taxable transfer.

With respect to your ruling requests, Code section 408(a) provides the rules governing IRAs. Code section 408(a)(6) provides that, under regulations prescribed by the Secretary, rules similar to the rules of section 401(a)(9) and the incidental death benefit requirements of section 401(a) shall apply to the distribution of the entire interest of an individual for whose benefit the trust is maintained.

Code section 401(a)(9)(A) provides, in general, that a trust will not be considered qualified unless the plan provides that the entire interest of each employee --

(i) will be distributed to such employee not later than the required beginning date, or

(ii) will be distributed, beginning not later than the required beginning date, over the life of such employee or over the lives of such employee and a designated beneficiary or over a period not extending beyond the life expectancy of such employee or the life expectancy of such employee and a designated beneficiary.

Code section 401(a)(9)(B)(ii) provides, in general, that if a plan participant (IRA holder) dies before the distribution of his interest has begun in accordance with subparagraph (A)(ii) (prior to his required beginning date), then his entire interest must be distributed within 5 years of his death.

Code section 401(a)(9)(B)(iii) provides an exception to the 5- year rule (above). In general, pursuant to the exception, if any portion of the interest of a deceased plan participant (IRA holder) is payable to (or for the benefit of a designated beneficiary), such portion will be distributed beginning not later than 1 year after the date of the deceased's death (or a later date as prescribed by the Secretary under Regulations) in accordance with regulations over the life of the designated beneficiary (or a period not extending beyond the life expectancy of the beneficiary).

Code section 401(a)(9)(E) defines "designated beneficiary" as any individual designated as a beneficiary by the employee (IRA holder).

With further respect to your ruling requests, "Final" Income Tax Regulations under Code sections 401(a)(9) and 408(a)(6) were published in the Federal Register at 67 Federal Register 18987- 19028 (April 17, 2002), and in the Internal Revenue Bulletin at 2002-19 I.R.B. 852 (May 13, 2002). The Preamble to the "Final" Regulations, in relevant part, provide that the regulations apply for determining required minimum distributions for calendar years beginning after January 1, 2003.

In addition, the "Final" Regulations have been modified in part (See 2004-26 I.R.B. 1082, 1098 (June 28, 2004)). The modification to the "Final" Regulations may also be relied upon with respect to required distributions for the 2003 and subsequent calendar years.

Section 1.401(a)(9)-4 of the "Final" regulations, Q&A-1, provides, in relevant part, that a designated beneficiary is an individual who is designated as a beneficiary under a plan either by the terms of the plan or by an affirmative election by the employee. A beneficiary designated under the plan is an individual who is entitled to a portion of an employee's benefit contingent on the employee's death or another specified event. A designated beneficiary need not be specified by name in the plan or by the employee to the plan in order to be a designated beneficiary so long as the individual who is to be the beneficiary is identifiable under the plan. Q&A-1 further provides that a person who takes under a will or otherwise under applicable state law will not be a designated beneficiary unless that individual also takes under a plan.

Section 1.401(a)(9)-4 of the "Final" regulations, Q&A-4(a), provides, in relevant part, that in order to be a designated beneficiary, an individual must be a beneficiary as of the date of (the employee's or IRA holder's) death. Generally, an employee's designated beneficiary will be determined based on the beneficiaries designated as of the date of death who remain beneficiaries as of September 30 of the calendar year following the calendar year of death.

Consequently, any person who was a beneficiary as of the date of the employee's date, but is not a beneficiary as of that September 30 (e.g. because the person receives the entire benefit to which the person is entitled before that September 30) is not taken into account in determining the employee's designated beneficiary for purposes of determining the distribution period for required minimum distributions after the employee's death.

Section 1.401(a)(9)-4 of the "Final" regulations, Q&A-3, provides that only individuals may be designated beneficiaries for purposes of section 401(a)(9). A person who is not an individual, such as the employee's estate, may not be a designated beneficiary. However, Q&A-5 of section 1.401(a)(9)-4 provides that beneficiaries of a trust with respect to the trust's interest in an employee's benefit may be treated as designated beneficiaries if the following requirements are met:

- (1) the trust is valid under state law or would be but for the fact there is no corpus.
- (2) the trust is irrevocable or will, by its terms, become irrevocable upon the death of the employee.

(3) the beneficiaries of the trust who are beneficiaries with respect to the trust's interest in the employee's benefit are identifiable within the meaning of A-1 of this section from the trust instrument.

(4) the documentation described in A-6 of this section has been provided to the plan administrator.

Section 1.401(a)(9)-4 of the "Final" Regulations, Q&A-6(b), provides in relevant summary, that, at a minimum, documentation sufficient to enable an IRA custodian to identify beneficiaries of an IRA must be provided by a trustee to the custodian by October 31 of the calendar year immediately following the calendar year in which the IRA owner died.

Section 1.401(a)(9)-5 of the "Final" regulations, Q&A-7(c) provides, in relevant part, that a person who has any right (including a contingent right) to an employee's benefit beyond being a mere potential successor in the interest of one of the employee's beneficiaries upon that beneficiary's death, must be considered for purposes of determining who, if anyone, is the employee's designated beneficiary. Q&A-7(c) provides an example pursuant to which a principal remainderman of an income beneficiary of an employee's interest must be considered for purposes of determining who, if anyone is the employee's designated beneficiary.

Section 1.401(a)(9)-3 of the "Final" regulations, Q&A-3(a) provides, in general, that, with respect to the life expectancy exception to the 5-year rule described in Code section 401(a)(9)(B)(iii), and in A-1, distributions are required to begin to a non-spouse beneficiary on or before the end of the calendar year immediately following the calendar year in which the employee died. This rule also applies if another individual is a designated beneficiary in addition to the employee's (IRA holder's) surviving spouse.

Section 1.401(a)(9)-3 of the "Final" regulations, Q&A-4(a), provides, in relevant part, that in the absence of a plan provision to the contrary, with respect to an individual who dies prior to reaching his required beginning date, if said individual has designated a beneficiary, distributions from his plan or IRA are to be made in accordance with the life expectancy rule of Code sections 401(a)(9)(B)(iii) and (iv).

Section 1.401(a)(9)-5 of the "Final" regulations, Q&A-5(b), provides, in general, that if an employee dies before his required beginning date, in order to satisfy the requirements of Code section 401(a)(9)(B)(iii) or (iv) and the life expectancy rule described in A-1 of section 1.401(a)(9)-3, the applicable distribution period for distribution calendar years after the distribution calendar year containing the employee's date of death is determined in accordance with paragraph (c) of this A-5.

Section 1.401(a)(9)-5 of the "Final" regulations, Q&A-5(c)(1), provides, in general, that, with respect to a non-spouse beneficiary, the applicable distribution period measured by the beneficiary's remaining life expectancy is determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the employee's death. In subsequent calendar years, the applicable distribution period is reduced by one for each calendar year that has elapsed after the calendar year immediately following the calendar year of the employee's death.

Section 1.401(a)(9)-5 of the "Final" regulations, Q&A-7(a) provides, in summary, that except as otherwise provided in paragraph (c) of this A-7 (not pertinent to this ruling request), if more than one individual is designated as a beneficiary with respect to an employee as of the applicable date for determining the designated beneficiary, the named beneficiary with the shortest life expectancy will be the designated beneficiary for purposes of determining the applicable distribution period.

Section 1.401(a)(9)-8 of the "Final" regulations, Q&A-2(a), provides the "separate account" rules with respect to defined contribution plans.

Section 1.401(a)(9)-4 of the "Final" regulations, Q&A-5(c), provides, in relevant part, that the separate account rules are not available to beneficiaries of a trust with respect to the trust's interest in an employee's benefit.

Section 1.401(a)(9)-9 of the "Final" Regulations, Q&A-1, sets forth the "Single Life Table" to be used to determine the life expectancy of an individual. As previously noted, taxpayers must compute minimum required distributions for calendar years beginning with calendar year 2003 in accordance with the "Final" regulations referenced above.

Code section 408(d)(1) provides, generally, that, in accordance with the rules of section 72, amounts paid or distributed from an IRA are included in the gross income by the payee or distributee.

Code section 408(d)(3)(C) provides, generally, that amounts from an "inherited" IRA cannot be rolled over into another IRA. In general, an "inherited" IRA is an IRA maintained by an individual who acquired said IRA by reason of the death of another if the acquiring individual is not the surviving spouse of said other individual. In this case, as noted above, Individual B is Taxpayer A's spouse, and Individual C is Taxpayer A's son. .

Revenue Ruling 78-406, 1978-2 C.B. 157, provides that the direct transfer of funds from one IRA trustee to another IRA trustee, even if at the behest of the IRA holder, does not constitute a payment or distribution to a participant, payee or distributee as those terms are used in Code section 408(d). Furthermore, such a transfer does not constitute a rollover distribution.

Additionally, a trustee to trustee transfer, as described in Rev. Rul. 78-406, does not constitute a distribution or payment as those terms are defined for purposes of Code section 408(d).

Finally, Rev. Rul. 78-406 is applicable if the trustee to trustee transfer is directed by the beneficiary of an IRA after the death of the IRA owner as long as the transferee IRA is set up and maintained in the name of the deceased IRA owner for the benefit of the beneficiary.

With respect to your initial ruling request, it has been represented that Trust A is valid under the laws of State A, became irrevocable at the death of Taxpayer A, and that relevant documentation relating to Trust A's status as beneficiary of Taxpayer A's IRA X was timely given to the IRA custodian by the date required under the "Final" Regulations promulgated under Code section 401(a)(9). Furthermore, the Service notes that the identity of each person entitled to receive any portion of Taxpayer A's IRA X upon his death is determinable by perusing its provisions of Trust A. The beneficiaries of Trust A are Individuals B and C.

Therefore, in response to your initial ruling request, we conclude:

1. That Trust A qualifies as a "See-Through Trust" within the meaning of section 1.401(a)(9)-4 of the "Final" Income Tax Regulations, Q&A-5.

With respect to your second and third ruling requests, because the minimum required distributions for a "See-Through" Trust are paid out over the life expectancy of the oldest beneficiary, it is necessary to determine who, if anyone, is the designated beneficiary, within the meaning of Code sections 401(a)(9) and 408(a)(6), of IRA Y.

As previously stated, Section 1.401(a)(9)-5 Q&A-7(c) provides, in relevant part, that a person who has any right (including a contingent right) to an employee's benefit beyond being a mere potential successor in the interest of one of the employee's beneficiaries upon that beneficiary's death, must be considered for purposes of determining who, if anyone, is the employee's designated beneficiary.

The example provided in Q&A-7(c) notes that if the first beneficiary has a right to an income with respect to an employee's individual account during that beneficiary's life and a second beneficiary has a right to the principal but only after the death of the first income beneficiary, both beneficiaries must be taken into account in determining the beneficiary with the shortest life expectancy and whether only individuals are beneficiaries.

In this case, Individual B is not a mere potential successor in interest of Individual C. Additionally, Individual B has an outright claim to the remainder interest in Trust A property. Her right to the remainder property is not subject to any condition with respect thereto.

As a result, Individuals B and C, are the only beneficiaries who can receive the amounts distributed from IRA X (IRA Y) and the only beneficiaries who must be considered for purposes of determining who is the designated beneficiary, within the meaning of Code section 401(a)(9)(E), of IRA Y.

Section 1.401(a)(9)-4 of the "Final" regulations, Q&A-5(c), provides, in relevant part, that the separate account rules of A-2 of section 1.401(a)(9)-8 are not available to beneficiaries of a trust, even if the trust is a "see-through" trust within the meaning of Q&A-5 of section 1.401(a)(9)-4. Thus, in general, the beneficiary of a trust must receive minimum required distributions over the life expectancy of the eldest beneficiary. As noted previously, Individual B is older than Individual C.

With respect to the Code section 401(a)(9) payout period applicable to IRA X (now IRA Y), we note that the Date 6 beneficiary designation provides, in relevant part, that the Trust A trustees shall insure that distributions from the IRA are received in accordance with the requirements of applicable law. This ruling letter assumes that State A law would interpret the Trust A language to require that Code section 401(a)(9) applies to IRA Y distributions to Trust A.

Therefore, with respect to your second and third ruling requests, we conclude as follows:

2. That Individuals B and C are the only individuals who need to be considered potential "designated beneficiaries", as that term is defined in Code section 401(a)(9)(E), of IRA Y for purposes of determining the minimum distributions under section 401(a)(9) of the Code there from, and

3. That, the minimum distribution requirements under Code section 401(a)(9) may be met by distributing amounts annually from IRA Y, computed using the remaining life expectancy of Individual B utilizing the Single Life Expectancy Table provided in section 1.401(a)(9)-9, Q&A-1, commencing with the calendar year 2004, and reduced by one for each subsequent year in accordance with section 1.401(a)(9)-5, Q&A-5(c)(1).

With respect to your final ruling request, Revenue Ruling 78-406 provides that the direct transfer of funds from one IRA trustee to another IRA trustee, even if at the behest of the IRA holder (or beneficiary of a deceased IRA holder), does not constitute a payment or distribution to a participant, payee, or distributee as those terms are used in Code section 408(d). Furthermore, such a transfer does not constitute a rollover distribution and contribution. Thus, with respect to your fourth ruling request, we conclude as follows:

4. That the Trust A Trustees may transfer, by means of a direct trustee to trustee transfer, Trust A's interest in IRA Y to another IRA described in Code section 408(a) maintained by Bank A and established in the name of Trust B (IRA Z), and that such transfer will not constitute a payment or distribution out of IRA Y to Trust A as beneficiary, payee, or distribute as those terms are defined in Code section 408(d) and will otherwise be a non-taxable transfer.

This ruling letter is based on the assumption that IRA X, IRA Y and the to be established IRA Z either met, meets, or will meet the requirements of Code section 408(a) at all times relevant to. Furthermore, this ruling letter rests on the assumption that Trust A is valid under the laws of State A as represented. Additionally, it assumes that the disclaimer referenced herein complied with the requirements of Code section 2518 as represented. It also assumes the correctness of all facts and representations contained therein.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter has been sent to your authorized representatives in accordance with a power of attorney on file in this office.

If you wish to inquire about this ruling, please contact * * *, I.D. No. * * *, at either * * * or * * * (FAX). Please address all correspondence to SE:T:EP:RA:T4,

Sincerely yours,



Donzell H. Littlejohn, Manager
Employee Plans, Technical Group 4

Enclosures:

Deleted Copy of Ruling Letter
Notice of Intention to Disclose

cc: